



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
 )  
**CARL H. AND ELLEN G. BERGMAN** )

For Appellants: Arlie W. Bergman  
Attorney at Law

For Respondent: Crawford H. Thomas  
Chief Counsel

Julie Eagan  
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Carl H. and Ellen G. Bergman against a proposed assessment of additional personal income tax in the amount of **\$6,941.70** for the year 1968.

The issue presented is whether a taxpayer who makes an election with respect to the use of the 'install-

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ment method of reporting income may change his election after the expiration of the time allowed for filing the return.

In November 1968, appellants sold a parcel of unimproved land. Payments were to be spread over a 10-year period on terms which **concededly** would have allowed appellants **to report** their **gain by** the installment method. (Rev. & Tax. Code, § 17578.) The total gain on the sale was **\$107,247.77**.

When appellants filed their timely joint California personal income tax return for 1968 they elected to report the entire **\$107,247.77** as income in that year. The return also contained a claimed deduction for a net operating loss carryover in the amount of **\$137,080.14**. Respondent disallowed the deduction and issued a Notice of Additional Tax Proposed To Be Assessed. Appellants protested. Shortly after filing their protest, about November 30, 1970, they filed an amended return. This return did not claim the net operating loss deduction, but it did report only the first payment on the land sale. Respondent denied the protest, **ignoring the amended return, and this** appeal followed.

Appellants do not claim that respondent acted incorrectly in denying their claimed deduction for a net operating loss carryover. Instead they say that they would have treated their land sale by the installment method on their California return if they had realized that California law did not provide for a loss carryover. Having discovered their error, they wish to change their election to reduce the resultant 1968 tax liability.

Decisions of the federal courts are entitled to great weight in interpreting state statutes which are based on identical federal law. There is a strong public policy favoring similar interpretation of similar statutes dealing with the same subject. (Meanley v. McColgan, 49 Cal. App. 2d 203, 209 [121 P.2d 451].) The

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Revenue Act of 1928 established installment reporting as part of the federal law. The California counterpart was adopted in 1935. In 1937 the United States Supreme Court, in Pacific National Co. v. Welch, 304 U.S. 191, 82 L. Ed. 12821, held that where a taxpayer makes an election not to use the installment reporting method, that election is binding and may not be changed after expiration of the time allowed for filing the return. As the Court said:

Change from one method [of reporting income] to [another], as petitioner seeks, would require recomputation and readjustment of tax liability for subsequent years and impose burdensome uncertainties upon the administration of the revenue laws. It would operate to enlarge the statutory period for filing returns...to include the period allowed for recovering overpayments.... There is nothing to suggest that Congress intended to permit a taxpayer, after expiration of the time within which return is to be made, to have his tax liability computed and settled according to [another] method. By reporting income from the sales in question according to [one] method, petitioner made an election that is binding upon it and the commissioner. (304 U.S. at 194-195.) (Emphasis added and footnote omitted.)

Under the circumstances of this appeal we find this decision of the Supreme Court to be highly persuasive of the result to be reached under California law, and we therefore affirm the action of the Franchise Tax Board.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED-, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the., protest of Carl H. and Ellen G. Bergman against a proposed assessment of ad-ditional personal income tax in the amount of \$6,941.70 for the year 1968, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of February, 1974, by the State Board of Equalization.

Robert K. Repen, Chairman  
James W. Lynch, Member  
Paul C. Her, Member

William H. Smith, Member

ATTEST : W. W. Dunslop, Secretary